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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,400	08/16/2001	Herve J. Laurent	J466-001 CON2	4803
21706	7590	07/08/2004	EXAMINER	
NOTARO AND MICHALOS 100 DUTCH HILL ROAD SUITE 110 ORANGEBURG, NY 10962-2100			ELOSHWAY, NIKI MARINA	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/931,400

Applicant(s)

LAURENT, HERVE J.

Examiner

Niki M. Eloshway

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 27-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 27-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-21 of U.S. Patent No. 6,155,452 in view of Esposito (U.S. 5,071,042). U.S. Patent No. 6,155,452 discloses the claimed invention but adds the limitation that the seal is annular and extends into the groove. Esposito teaches that it is known to provide a main cap with an annular seal which extends into a groove of the container (see element 26). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seal member set forth in the claims of the present application with the seal being annular and extending into

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the groove, as taught by Esposito, in order to properly seal the container so that the contents do not leak from between the main cap and container.

3. Claims 27-32, 35, 37 and 41 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-11 of U.S. Patent No. 6,311,865 in view of Forbes (U.S. 5,261,554). U.S. Patent No. 6,311,865 discloses the claimed invention and includes an enclosure. Forbes teaches that it is known to provide a sealing assembly with an enclosure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the sealing assembly set forth in the claims of the present application with an enclosure, as taught by Forbes, in order to insulate the container, as well as seal the container.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 39 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 39 recites the limitation "the platform" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 39 also recites the limitation "the live hinge" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 27-32, 35, 37, 38 and 40-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Esposito (U.S. 5,071,042). Esposito teaches a main cap 12, a seal member 26, a locking means 28, an opening 17 and a secondary cap (col. 3 lines 30-32). As shown in figures 4 and 5, the seal member could be comprised of elements 54, 62 and 58.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Esposito (U.S. 5,071,042). Esposito discloses the claimed invention except for the length of the latch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the seal assembly of Esposito with the latches extending 90 to 180 degrees about the circumference, since a change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Conclusion

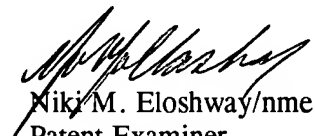
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the latch arrangement.

11. THIS ACTION IS NON-FINAL.

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12. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (703) 308-1606. The examiner is in the office on Tuesdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Customer Service Office at (703) 306-5648.


Niki M. Eloshway/nme
Patent Examiner
July 2, 2004